

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: JOHN KLETSCH	ADMINISTRATIVE CONSENT ORDER NO. 2012-AQ-05
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TO: John Kletsch
209 5th Avenue, P.O. Box 15
Superior, Iowa 51363

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and John Kletsch for the purpose of resolving solid waste disposal and illegal open burning violations that occurred in Dickinson County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Sheila Kenny
Iowa Department of Natural Resources
Field Office No. 3
1900 N. Grand
Gateway North, Suite E17
Spencer, Iowa 51301-2200
Phone: 712/262-4177

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to

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that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. John Kletsch owns the property located at 209 5th Avenue in Superior, Dickinson County, Iowa (the site). On April 23, 2011, the Dickinson County Sheriff Department contacted DNR Field Office No. 3 regarding a large pile of burning tires and other debris behind the residence at the site. The burning produced large volumes of black smoke and other air pollutants. Dickinson County Deputy Sheriff Tracy Kuiper investigated the site on April 23, 2011, and observed the burning, and photographed several tires in the fire. The Superior Fire Department was called and extinguished the fire.

2. On April 25, 2011, a follow-up investigation was conducted by Deputy Kuiper and Sheila Kenny, Environmental Specialist with DNR Field Office No. 3. Ms. Kenny observed the remains of 15 to 20 tires, along with evidence of a mattress or box spring, a chair, an oil filter, and other miscellaneous debris in the burn pile. Ms. Kenny took photos of the burn pile.

3. A May 3, 2011, Notice of Violation letter (NOV) was sent to John Kletsch for open burning. The letter contained copies of the Iowa regulations concerning open burning.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The open burning that occurred at the site on April 23, 2011, demonstrates violations of this provision.

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3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and John Kletsch agrees to the following:

1. John Kletsch shall immediately discontinue improper open burning of solid waste and other materials at any location in the State of Iowa; and Mr. Kletsch shall comply in the future with all state and local requirements regarding the prohibition against illegal open burning; and

2. By August 15, 2012, John Kletsch shall remove all remaining solid waste from the site and shall provide written proof of proper disposal at a licensed sanitary landfill or recycling center to DNR Field Office No. 3; and

3. John Kletsch shall pay a penalty of \$3,000.00 according to the following payment plan:

\$150.00 due March 1, 2012	\$150.00 due January 1, 2013
\$150.00 due April 1, 2012	\$150.00 due February 1, 2013
\$150.00 due May 1, 2012	\$150.00 due March 1, 2013
\$150.00 due June 1, 2012	\$150.00 due April 1, 2013
\$150.00 due July 1, 2012	\$150.00 due May 1, 2013
\$150.00 due August 1, 2012	\$150.00 due June 1, 2013
\$150.00 due September 1, 2012	\$150.00 due July 1, 2013
\$150.00 due October 1, 2012	\$150.00 due August 1, 2013
\$150.00 due November 1, 2012	\$150.00 due September 1, 2013
\$150.00 due December 1, 2012	\$150.00 due October 1, 2013

Payment shall be made to DNR at the following address:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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If John Kletsch fails to timely make two payments pursuant to the above schedule, then the entire remaining amount of the penalty shall become due immediately

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$3,000.00 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – John Kletsch has achieved an economic benefit from open burning and improper waste disposal. John Kletsch could have recycled larger tires for \$15.00 per tire and large agricultural tires for \$20.00 per tire at the local recycling center, approximately seventeen miles from the site. With Approximately twenty tires burned at the site, the estimated disposal cost would be at least \$300.00 for the twenty tire alone. Additionally, John Kletsch could have disposed of furniture and mattresses or box springs for approximately \$20.00 each at the local landfill, approximately thirteen miles from the site. John Kletsch has saved time, labor, and landfill costs due to avoidance of solid waste disposal in the amount of \$500.00. Therefore, a penalty of \$500.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. Substantial penalties are authorized by statute. Despite the high penalties authorized, DNR has determined that the most equitable and efficient means of resolving the matter is through an administrative consent order. Failure to properly dispose of solid waste threatens the integrity of the regulatory program. The open burning of tires, furniture, and waste oil filters can release toxins that

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pollute the air and may pose a risk to human health and the environment.
Therefore, \$1,500.00 is assessed for gravity of violation

Culpability – John Kletsch has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. The open burning of tires is specifically prohibited by the DNR rules. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of John Kletsch. For that reason, John Kletsch waives his right to appeal this order or any part thereof.

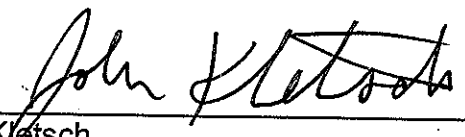
VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



Roger L. Lande, Director
Iowa Department of Natural Resources

Dated this 6th day of
March, 2012.



John Kletsch

Dated this 10 day of
Feb., 2012.

Dickinson County Air Quality file; Anne Preziosi; DNR Field Office 3; VII.C.2

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